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OFFICE OF PETITIONS

In re Application of :
Tomita, et al. :
Application No. 10/645,804 : **ON PETITION**
Filed: August 22, 2003 :
Attorney Docket No.: 241833US0 :

This is a decision on the petition filed January 20, 2004, titled "Petition under 37 CFR 1.53(e)". Petitioner is advised that the petition will be treated as request to vacate the language that speaks to omitted items in the "Notice to File Missing Parts of Nonprovisional Application" mailed November 19, 2003, in the above-cited application.

The petition is **dismissed**.

On August 22, 2003, the above-identified application was filed. However, on November 19, 2003, the Office of Initial Patent Examination mailed a "Notice to File Missing Parts of Nonprovisional Application," stating that application had been accorded a filing date of August 22, 2003, and advising applicant that Figures 2 through 12 as described in the specification appeared to have been omitted. The notice also set a two month period for reply relative to the alleged omitted items and indicated that the two month period for reply was not extendable.

In response, on January 20, 2004, applicant filed the present petition and a \$130.00 petition fee, copies Figures 2 through 12, and a copy of an Office date-stamped postcard receipt acknowledging receipt of 8 sheets of drawings on August 22, 2003, among other items. No certificate of mailing under 37 CFR 1.8 was found among the petition papers.

Relative to the alleged omitted items, the "Notice to File Missing Parts of Nonprovisional Application" permitted applicant to either: (1) promptly establish prior receipt in the Office of the items at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted items and accept the date of such submission as the application filing date. The notice further indicates that:

[t]he failure to file a petition (and petition fee) under the above options (I) or (II) within TWO MONTHS of the date of this Notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited in the USPTO. **THIS TWO MONTH PERIOD IS NOT EXTENDABLE UNDER 37 CFR 1.136(a) or (b).** In the absence of timely filed petition in reply to this Notice, the application will maintain a filing date as of the date of deposit of the application in the USPTO, and original application papers (i.e., the original disclosure of the invention) will include only those application papers present in the USPTO on the date of deposit.

The instant petition was not timely filed as the two month period set for reply to expired at midnight on January 19, 2004; the petition dismissed, accordingly.

Petitioner should file a preliminary amendment correcting the inconsistencies in the application prior to the first Office action.

The declaration filed January 20, 2004, is noted. In order for the declaration to be considered timely file, an extension of time within the first month is necessary. Deposit account 15-0030 will be charged \$110.00 for the extension of time within the first month.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of August 22, 2003, using the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0010.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions